LAW OF CONTRACT 1

ANALYSIS

COMPILED BY

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CONTRACT QUESTIONS (2012-2022)

1. Tanko lived in Calgary, Alberta, and owned a cottage on Vancouver Island. Percy who lives in Victoria, British Columbia was interested in purchasing the cottage owned by Tanko. On September 10, Percy wrote a letter to Tanko offering to purchase of the cottage and other appurtenances for $300,000. Tanko received the letter on September 15 and sent Percy an electronic mail and fax at the same time offering to sell the cottage to him for $350,000. Percy did not respond to the email or fax immediately, but on a business trip to Calgary. On September 22, he spoke about the cottage to Tanko on an effort to determine if Tanko might be waiting to reduce the price. Tanko replied that the price was firm at $350,000. When Percy returned to Victoria, British Columbia, he sent a letter to Tanko accepting the offer to sell the cottage at $350000. The letter was posted at 11:40 a.m. on September but through a delay in the mail, it was not delivered to Tanko in Calgary until 4:20 p.m. on September 28th.

   In the meantime when Tanko had not heard from Percy by September 26, he offers to sell the cottage to Johnson who had expressed an interest in purchasing the cottage for some time before Johnson accepted the offer and the two parties executed a written purchase agreement in Johnson's office on the morning of September 27. Identify the negotiations in this case and address all legal issues dealing with decided and relevant cases. (Question 1, 2012)

2. Consensus ad idem is germane to any contract which will be enforceable. by this, "one thing is common to all these transactions and that is the existence of an agreement which will enable the enforcement of rights and obligations between the parties. See (Shonubi v Onafeko). Discuss. (Question 2, 2012); (Question 2, 2018); (Question 2, 2014)

3. Tade, one of the successful candidates at the last post utme examination of the University of Ibadan has approached you on some issues of Law bordering particularly on forms of contract. He stated that he heard from a friend that apart from all forms of contract under seal; all other contracts are simple ones. Kindly educate Tade. (Question 3, 2012)

4. Kunle has been offered admission to study law in the university has submitted his acceptance to the admission office. Slyjet told Kunle that by the street application of the law of contract, his offer of admission by the university and acceptance of the admission amounted to a contract. He stated further that since Kunle is 17 years old, his admission is invalid because Kunle has not attained the age of majority under the Nigerian law of contract. Hajara who has also been offered admission said she's 18 years and by virtue of the Nigerian constitution, a contract with the university is valid because voting age in Nigeria is 18 years. Ejiro on the other hand said that by virtue of the Child's Right Convention, an 18 year old can enter into a contract. Samson said that their argument were mere academic exercises that the main issue should be whether the students are under obligation to pay the balance of the laptops given to them at low costs, at the point of acceptance of their respective admission since they are minors. Take a position on each of the above statement with reasons. (Question 5, 2012)

5. Hamisu cannot read or write in English but can communicate effectively in Hausa language. Hamisu entered into a contract with a bid for the supply of a tanker of load of petrol. I was also claimed that he took 15 cans of Heineken beer before signing the contract. the head of chambers of your firm has requested you to prepare your questions for client interview. What are The likely questions you would ask Hamisu in order to draught a statement of defense. (Question 6, 2012)

6. An invitation to treat is not an offer that can be accepted to lead to an agreement or contract and therefore cannot form the basis of any course of action. Per Uwaifo JSC in (Neka B.B.B Manufacturing Co v African continental Bank LTD). Discuss (Question 1, 2019); (Question 4, 2016)

7. The defendant wrote to the plaintiff on1st August 2004 offering to sell 900 tons of iron at 50,000 naira Par ton. On the same day the plaintiff wrote to the defendant offering to buy 900 tons of iron at 50,000 naira per ton. The letter crossed in the post. The plaintiffs

argued that there was a contract between them. They court dismissed the plaintiffs case and the court held thus:

"When the contract is made between parties, there is a promise by one in consideration of the promise made by the other, there are two assenting minds, the parties agreeing in opinion and they wonder having promised in consideration of the promise made by the other, there is an exchange of promise but I do not think exchanging offers made on the other side in ignorance of the promise or offer made on the other side neither of them can be construed as an acceptance of the offer".

Justify this position in light of established principles of the law of contract. (Question 2, 2019).

8. All contracts are agreement but not all agreements are contracts. Discuss (Question 3, 2019), (Question 3, 2016)

9. A person who is not a party to a contract has no right or liability under it and therefore the contract cannot be enforced against him. Enumerate the principle of law in the statement and discussed fully the exceptions. (Question 1, 2018); (Question 4, 2019)

10. Write short notes on the following
    a. Invitation to Treat. (Question 3, 2018)
    b. Offer. (Question 3, 2018)
    c. Acceptance. (Question 3, 2018)
    d. Consideration. (Question 3, 2018)
    e. Intention to create legal relations. (Question 3, 2018)

11. Akintunde, a 17 year old engineering student purchased an iPhone from Alhaji Adamu, an agent of express telecommunication merchandise, for the sum of 300,000 naira under an arrangement that he would make a monthly installment of 100,000 naira. Shortly after Akintunde Left the store, Akinola who left the bar upon consumption of eight bottles of

Star beer staggered into the shop to buy a similar phone under the same arrangement as Akintunde's. While Akinola was about leaving the store, he went back to AlhajiAdamu that he should also sell on credit, an umbrella branded with apple logo, to prevent him from being drenched by the heavy downpour. what are the likely legal issues that might arise from the above facts. (Question 4, 2018)

12. Once consideration is some sort of value in the eyes of the law the court have no jurisdiction to determine whether it is adequate or inadequate. (Gaji v Faye). Examine the above statement in view of consideration as an element of a valid contract. (Question 3, 2014)

13. It is the element of acceptance that the bilateral nature of a contract. (BFIG v BPE). In line with the above assertion discussed the following modes of acceptance.
    A. By conducts of the parties (Question 4, 2014)
    B. by their words. (Question 4, 2014)
    C. By document that have passed between them. (Question 4, 2014)
    D. By post. (Question 4, 2014)

14. The operation of the ruling Pinnel's case worked hardship and injustice to the defendant who would have believed and relies on the plaintiffs promised to forgo the balance of the debt owed. In view of the aforesaid, discuss the rule in High Tree's case. (Question 6, 2016).

QUESTION 1

Tanko lived in Calgary, Alberta, and owned a cottage on Vancouver island. Percy who lives in Victoria, British Columbia was interested in purchasing the cottage owned by Tanko. On September 10, Percy wrote a letter to Tanko offering to purchase of the cottage and other appurtenances for $300,000. Tanko received the letter on September 15 and sent Percy an electronic mail and fax at the same time offering to sell the cottage to him for $350,000. Percy did not respond to the email or fax immediately, but on a business trip to Calgary. On September 22, he spoke about the cottage to Tanko on an effort to determine if Tanko might be waiting to reduce the price. Tanko replied that the price was firm at $350,000. When Percy returned to Victoria, British Columbia, he sent a letter to Tanko accepting the offer to sell the cottage at $350000. The letter was posted at 11:40 a.m. on September but through a delay in the mail, it was not delivered to Tanko in Calgary until 4:20 p.m. on September 28th.

In the meantime when Tanko had not heard from Percy by September 26, he offers to sell the cottage to Johnson who had expressed an interest in purchasing the cottage for some time before Johnson accepted the offer and the two parties executed a written purchase agreement in Johnson's office on the morning of September 27. Identify the negotiations in this case and address all legal issues dealing with decided and relevant cases. (Question 1, 2012)

ANSWER

THE USE OF FIRAC

FACTS

a. Tanko own a cottage in Vancouver Island
b. Percy interested in buying the cottage
c. Percy wrote a letter to Tanko on September 10, offering to purchase his cottage and other appurtenances for $300,000.
d. Tanko received the letter on September 15 and sent Percy an electronic mail and fax at the same time offering to sell the cottage to him for $350,000

e. Percy did not respond to the email or fax
f. On September 22, Percy spoke to Tanko if he was ready to reduce the price but Tanko Claimed that the price was firm at $350,000
g. Percy on getting home accepted Percy's offer to sell at $350,000
h. The letter was posted at 11:40 a.m. on September but through a delay in the mail, it was not delivered to Tanko in Calgary until 4:20 p.m. on September 28th.
i. Tanko, having not heard from Percy on September 26, offers to sell the cottage to Johnson.
j. Tanko and Johnson executed a written purchase agreement on September 27.

ISSUES

a. Whether or not there was a cross offer between Tanko and Percy
b. Whether or not, the offer between Tanko and Percy amounts to a counter offer
c. Whether or not, the letter posted on September 22, by 10:44am constitutes a valid accepted as at that moment
d. Whether or not, the contract a entered into between Tanko and Johnson is Valid.

RULE

- It is The law that when offers are identical in terms and such offer flows from one party to the other, such offer shall amount to a cross offer. This position was held in the case of (Tinns v Holfman).Furthermore,
- For an agreement to constitute a contract, there must be a reciprocal act of acceptance. However, in situations where there is a variation to the terms of the initial offer, then such acceptance shall constitute an invalid form of acceptance otherwise known as Counter Offer. See (Hyde v Wrench) and (Maj Gen. George Inneh v Agro Ferado LTD).
- Subsequently the moment of acceptance is very germane in every contractual agreement. The general rule of the moment of acceptance was clearly expressed by Lord Denning in the case of (Entores v Miles Far East co.) Where it was held

that the moment of acceptance is the moment at which the offeror is brought to the knowledge of the receival of such offer. However, this Rule takes its separate position when acceptance is done by posts.

- Rule of acceptance by post was clearly expressed by Lord Ellensborough in the 1818 case of (Adams v Lindsell) where the court held that the moment of acceptance is the time of posting.
- Lastly, the position of law is that when an agreement is expressly written and agreed upon, such agreement is valid except where it is vitiated by mistake, misrepresentation, fraud or duress. (Courtier v Hastie).

APPLICATION

1. The act of Percy writing a letter to Tanko Offering to buy his cottage and the reciprocal act of Tanko offering to sell his cottage to Percy constitute an act of cross offer as held in the case of (Tinns v Holfman).
2. Furthermore there was a contractual variationin the price negotiated for the cottage. Percy proposed to buy at $300,000 While Tanko proposed to sell at $350,000. This actual constituted a counter offer as there was no acceptance to the terms of the initial offer (Hyde v Wrench)
3. Percy having posted the acceptance letter, the position of law is that a valid acceptance was made at 11:40; the moment when the letter was posted. This position follows after the rules outline by Lord Ellensborough in the case of (Adams v Lindsell).
4. Tanko's agreement with Johnson who was void of a common mistake known as mistake as to subject matter otherwise known as Res Extincta (couturier v Hastie). The subject matter of the contract which was the cottage was absent as at the time an agreement was reached between Tanko and Johnson. Hence, this makes the agreement between Tanko and Johnson void of mistake.

CONCLUSION

- From your political scenario given above, and relying on the set of existing rules with due application to the existing issues, there was a valid contract between Tanko and Percy to sell a cottage at the rate of $350,000 and the contract between Tanko and Johnson is therefore invalid.

QUESTION 2

Consensus ad idem is germane to any contract which will be enforceable by this, **"one thing is common to all these transactions and that is the existence of an agreement which will enable the enforcement of rights and obligations between the parties**. See (Shonubi v Onafeko). Discuss. (Question 2, 2012); (Question 2, 2018); (Question 2, 2014)

APPROACH

Consensus ad idem, also known as "meeting of minds," is a fundamental principle in contract law that requires both parties involved in a contract to share a mutual understanding of the essential terms and conditions of the agreement. In order for a contract to be enforceable, there must be a clear agreement between the parties regarding their rights and obligations. This principle has been over time described as the hallmark of all contractual agreements. This flows from the fact that the court because write contracts, instead the parties to an agreement besides the terms of the agreement.

In the case of (Bilante Nig. LTD v National Deposit Insurance Company), the court noted that "contracts between parties must be the meeting of minds otherwise known as consensus ad idem" similarly, in (Nigerian Port authorities LTD. V Lotus Plastic & Anor)the supreme Court held that "parties are free to negotiate the terms of their relationship".

Consensus ad idem ensures that the parties have a common understanding of the key elements of the contract, such as the subject matter, price, quantity, quality, and delivery terms. It establishes

the basis for enforcing the rights and obligations derived from the agreement. When parties enter into a contract, they must express their intention to be bound by the terms and conditions outlined in the agreement. This intention, along with a common understanding of the contract's essential elements, is crucial for the enforceability of the contract. This is the rationale behind the Pacta Sunt Servanda rule.

For example, if Mr. A and Mr. B agrees to enter into a contract where Mr. B agrees to sell his car for $10,000, it is important that he and Mr. A are on the same page regarding the car's make, model, condition, and any additional terms such as the date of delivery or payment terms. If Mr. A believes they are discussing a new car, while Mr B believes they are talking about a used car, there is no consensus ad idem, as they do not share a common understanding of the subject matter. In such a case, the contract would likely be unenforceable.

The above position was the rationale why various forms of offer acceptance are regarded as invalid. In (Tinns v Holfman), The defendant, Mr Hoffman wrote to the complainant, Mr. Tinn with an offer to sell him 800 tons of iron for the price of 69s per ton. He requested a reply to this offer by post. On the same day, without knowing of this offer, Mr Tin also wrote to Mr Hoffman. He offered to buy the iron on similar terms. It was held in this case that there was no contract between Mr. Tinn and Mr. Hoffman for the iron. The cross offers were made simultaneously and without knowledge of one another; this was not a contract that would bind the parties for the iron. This position was reached due to the lack of meeting of minds. A similar position was further held in the case of (Hyde v Wrench).

Consensus ad idem is fundamental because it establishes the basis for enforcing contractual rights and obligations. Without a common understanding and agreement between the parties, it would be difficult to determine the parties' intentions and expectations, making it hard to enforce the contract.

In summary, consensus ad idem is paramount to the enforceability of a contract. It ensures that both parties share a mutual understanding of the essential terms and conditions of the agreement, allowing for the enforcement of rights and obligations between them.

QUESTION 3

Tade, one of the successful candidates at the last post utme examination of the University of Ibadan has approached you on some issues of Law bordering particularly on forms of contract. He stated that he heard from a friend that apart from all forms of contract under seal; all other contracts are simple ones. Kindly educate Tade. (Question 3, 2012)

ANSWER.

Contracts have been classified based on various modes across different jurisdictions. However the most celebrated classification of contract is formal and simple contracts. Formal contracts were the first set of contracts to be adopted into the common law following the actions of the Assumpsit in the 16th century. All forms of contract other than formal contracts are known as simple contracts. For better understanding, brief exegesis will be done and formal contract and simple contract.

Formal Contracts or Contract under Seal:

A contract under seal, also known as a deed, is a formal written agreement that is typically signed, sealed, and delivered by the parties involved. Historically, contracts under seal held a higher level of enforceability and were subject to different legal rules compared to simple contracts. In the case of (Adejuagbe Light ind LTD v Chinanwe), the Supreme Court held that: A deed is binding on its maker even though it's part has not been exchanged, so long it has been signed sealed and delivered. However, Subsequent to 1867, the house of the Lord held in (Xenox v Wickham) that a deed is binding on its maker even though it's parts has not been exchanged so long it has been signed, sealed and delivered.

Furthermore, the significance of contracts under seal has diminished over time and has been largely replaced by simple contracts in modern legal systems. One of the striking features of a contract under seal is that it does not require consideration to be legally binding. Consideration, which is an essential element of a simple contract, refers to the exchange of something of value

by both parties involved or better still could be defined in terms of forbearance following the definition of Lush J in (Currie v Misa). In contrast, a contract under seal is considered legally binding even if one party does not provide consideration. This rule typically applies to deeds relating to property, wills, and certain types of financial transactions.

Additionally, contracts under seal generally have a longer statute of limitations compared to simple contracts. This means that parties have a longer period to bring a legal action to enforce the terms of a contract under seal. However, this extended time limit is often subject to specific statutory provisions and may vary depending on the jurisdiction.

SIMPLE CONTRACTS

As aforesaid, a simple contract is any contract which does not fall under a formal contractor contract under the seal. Hence, the major distinguishing feature between a simple contract and you formal contracts is this deal. However it is worthy to note that an essential ingredient of every simple contract is consideration. Thus, only a person who has furnished consideration can enforce a simple contract. In view of this, the Supreme Court expressed in the case of (Odutola v Paper Sack LTD) that a party alleging an Oral agreement has the duty to prove such agreement to the halt. Thus, simple contracts have its spine rested upon the element of Consideration.

The Importance of consideration to simple contracts was further expressed by Skynner B in (Rann v Hughes)That all laws are by the laws of England Distinguished into agreement by specialty(contract under seal) Under agreement by Parol (simple contracts); Nor is there any third class as contract in writing. If they are merely written and not specialties, they are parolAnd consideration must be proved.

It is worth noting that the distinction between contracts under seal and simple contracts has been reduced or even eliminated in many legal systems. In some jurisdictions, the use of contracts under seal has been largely abandoned, and the laws that govern simple contracts have been extended to cover all types of agreements. This trend reflects a general movement towards simplifying contract law and promoting consistency and fairness in contractual relationships.

Decided cases have contributed to the decline in the significance of contracts under seal. Courts have often recognized that the formality associated with contracts under seal may not be necessary in many modern commercial transactions. As a result, they have been more inclined to treat contracts without a seal as simple contracts, subject to the same legal principles and requirements.

In conclusion, contracts under seal have historically held a higher level of enforceability and have been subject to different legal rules compared to simple contracts. However, the significance of contracts under seal has diminished over time, with the trend moving towards the recognition of simple contracts as the predominant form of agreement in modern legal systems. Decided cases have played a significant role in contributing to this shift, reflecting a more simplified and consistent approach to contract law.

QUESTION 4

Kunle has been offered admission to study law in the university has submitted his acceptance to the admission office. Slyjet told Kunle that by the street application of the law of contract, his offer of admission by the university and acceptance of the admission amounted to a contract. He stated further that since Kunle is 17 years old, his admission is invalid because Kunle has not attained the age of majority under the Nigerian law of contract. Hajara who has also been offered admission said she's 18 years and by virtue of the Nigerian constitution, a contract with the university is valid because voting age in Nigeria is 18 years. Ejiro on the other hand said that by virtue of the Child's Right Convention, an 18 year old can enter into a contract. Samson said that their argument were mere academic exercises that the main issue should be whether the students are under obligation to pay the balance of the laptops given to them at low costs, at the point of acceptance of their respective admission since they are minors. Take a position on each of the above statement with reasons. (Question 5, 2012)

ANSWER

The usage of FIRAC PRINCIPLE

FACTS

a. Kunle submitted his acceptance letter to the admissions office having been admitted to study law.
b. Slyjet told Kunle That is action of acceptance and offer by the university constituted the contract
c. Slyjet noted that, Kunle's Admission is invalid because he is still a minor
d. Hajara, an 18 year old newly admitted Claimed that her admission is valid because voting age is 18 by virtue of the Nigerian constitution
e. Ejiro Claimed that an 18 year old can enter into a valid contract by relying on the Child Convention Rights Act.
f. Samson Questioned whether students are under obligation to pay the balance of the laptops given to them at low cost at the point of acceptance of their respective admissions since they are minors.

ISSUES

1. Whether or not, Kunle's Action of submitting an acceptance letter to the admission office constitute A valid contract under the law of contract
2. Whether or not, Kunle's Admission is valid since he is still a minor
3. Whether or not, Hajara's Admission is valid by virtue of the Nigerian constitution and the voting age of 18
4. Whether or not, Ejiro can rely on the child's convention rights Act
5. Whether or not the students are obliged to pay the balance of the laptop given to them at lower costs considering that they are still minors

RULE

For an action to constitute a valid Contract, there must be presence of the 5 elements which constitutes a Valid contract and these elements includes Offer, Acceptance, Consideration, Intention and capacity. This was well emphasized in the case of (Orient Bank v Bilante Intl). These 5 Elements must be Precise, Unambiguous and Plain.

Therefore, as aforesaid, a contract must consist of

a. An expression of willingness to contract on specific terms (BFIG v Bureau of Public Enterprise),
b. A reciprocal act as a form of response to such expression(Orient Bank v Bilante Intl),
c. There must be some sort of inducement moving from the promisee(Curie v Misa).
d. The parties to the contract must intend to create a legal relationship (Balfour v Balfour) and finally
e. Both Parties must have capacity to the contract.

- For a university admission to be valid, certain requirements must be met. Thus, one of the requirements which precursors a valid admission is the attainment of the Age of majority. The position of law according to the law of Contract is that the age of majority is 21. This position has its origin from the English Laws. However, in situation where there is a particular local enactment which relates to the subject matter, such enactment shall prevail over the rule of English law. This position was clothed in the case of (Nze Benard Chigbu v Tominas) where Niki Tobi expressed that: **" where a local law has been made and it applies to a local situation, courts of law has no jurisdiction to travel all the way to England to look for an English law, for it is the intention of the legislators who had made those laws to apply it in their locality and not an English law which is foreign and inapplicable"**
- The law of Contract has its origin from the Actions of Assumpsit in the 16th Century. Hence, it is largely governed by the English Law. By this fact, the provision of voting age by virtue of the Nigerian constitution specifying Age 18

as the age of Majority for voting is largely immaterial to situations of contracts. The court often relies on the Common Law Age.

- Also, with respect to Conventions, the position of law is that, where such convention has been signed and domesticated, such law shall become valid upon domestication. This rule is provided for per Section 14, CFRN1999.
- With respect to infants, it is the Law that, any contract entered by an infant is voidable at the instance of such infant (Labinjoh v Abake), except such article is an article of necessity, he shall pay a reasonable price thereof (Peter v Flemings). This rule has also been provided for in Section 2(1) of the SGA 1893.

APPLICATION

1. By virtue of the university of Ibadan giving Kunle admission, an offer has arise. The action of Kunle subsequently submitting an acceptance letter at the admissions office constitutes Acceptance. There is an executory consideration to pay school fees flowing from the promisee (Kunle). The parties are further bound by Legal intentions and finally, for Kunle to have been considered for a provisional admission, he must have satisfied the age requirement of the University.
2. Kunle being a boy if 17 years is still a minor within the scope of law of Contract and will not be allowed to enter into a valid contract except a contract of Necessity. However, there must have been a special enactment which must have made Kunle to have been offered admission.
3. Hajara's admission is not a factor to be determined by the Constitution. The Constitution only specifies the political and governmental framework of the country and also provides for the age at which voting is done and not the age of contractual capacity nor the age requirement of the university.
4. The Child Convention Act happens to be an international instrument which only has the force of law and can be relied upon when it has been ratified and domesticated. Hence, as an international law, it continues to remain persuasive law within the realms of contract And Ejiro cannot rely upon it.
5. The payment of an article bought by a minor is a subjective case. The germane question is whether the article is a necessary or not. The SGA, Section 2 defines a necessary as

anything suitable for the sustenance of life such as food. In this case, we are concerned about laptop which is considered as a luxury. Hence, the position in the case of (Labinjoh v Abake) remains the law.

CONCLUSION

In light of the hypothetical scenario given above, and based on the application of the relevant rules to the issues which ensued, Kunle's acceptance constitutes a valid contract. Secondly, Kunle having satisfied the university's requirements, his admission his valid.

On the other hand, Hajara cannot be allowed to rely on the Constitutional provision of 18 years; hence, her admission is not valid on that grounds. Ejiro's reliance on the Child Convention Act is invalid due to it being an international instrument which has not been domesticated. Finally, the students are not bound to pay the balance of the laptop since they were infants and the contract is not a contract of necessity.

QUESTION 5

Hamisu cannot read or write in English but can communicate effectively in Hausa language. Hamisu entered into a contract with a bid for the supply of a tanker of load of petrol. It was also claimed that he took 15 cans of Heineken beer before signing the contract. the head of chambers of your firm has requested you to prepare your questions for client interview. What are The likely questions you would ask Hamisu in order to draught a statement of defense. (Question 6, 2012)

ANSWER

FACTS

1. Hamisu cannot read and write in English
2. Hamisu can communicate effectively in Hausa
3. Hamisu entered into a contract of the supply of a tanker of load of petrol
4. Hamisu took 15 cans of Heineken before signing the contract

LIKELY QUESTIONS TO ASK HAMISU BEFORE DRAFTING THE STATEMENT OF DEFENCE

1. In what language the contract was reached.
2. Whether or not the terms of the written agreement was read out to him (following the provision is Section 2 of the Illiterate Protection Laws).
3. Whether or not the documents was signed by the Hamisu.
4. Whether or not, the reading of the document and the signature was done before an Illiterate Jurat.
5. Whether or not, Hamisu fully understand the terms of the agreement before signing it.
6. Whether or not, Hamisu was conscious as at the time the document was signed by him.

The above Questions are necessary Questions to be asked in order to prepare a statement of defense for Hamisu.

QUESTION 6

An invitation to treat is not an offer that can be accepted to lead to an agreement or contract and therefore cannot form the basis of any course of action. Per Uwaifo JSC in (NekaB.B.B Manufacturing Co v African continental Bank LTD). Discuss (Question 1, 2019); (Question 4, 2016)

ANSWER

For an agreement to crystallize into a contract there must be the presence of the valid elements of a contract which ranges from offer to acceptance, consideration, intention to create legal relations and capacity. The first requirement in all contractual agreements is the existence of an offer which was defined in the case of *(B.F.I.G v Bureau of Public Enterprise)*. However, it is noteworthy that, not all forms of offers are valid as there could be invalid forms of offer. Such invalid forms of Offer are called INVITATION TO TREAT.

An Invitation to treat as the word implies means invitation to negotiate, invitation to make an offer, or invitation to chaffer. It can also be described as an offer to make an original offer or an offer to negotiate. It is often preliminary to the real offer. The term Invitation to treat was expressly defined in the case of (Gibson v Man City council). Furthermore, Invitation to treat can come in various forms and these forms include Auction, Display of goods or services, Advertisements, Invitation to tender.

AUCTION

The term Auction is one of the invalid forms of offer. Within the parlance of commercial law, the term Auction may be defined as an act of selling articles or commodities to the highest bidder. The general rule of law is that an auction does not constitute an offer but an invitation to treat notwithstanding, an offer only arises when the auctioneer's hammer falls. This rule was judicially blessed in (Payne v Cave).

Furthermore, in a case of auction, the auctioneer is bound to sell the lot to the highest bidder as emphasized in (Adebaje v Conde), except the auction is with reserve. This principle was upheld in the case of (Harris v Nickerson).

With respect to referential bid, the court is of the opinion that, a referential bid is an invalid form of auction as the House of the Lords rightly noted in (Hervala Investment Nig LTD v Royal Trust Company of Canada) that, "if every bidder makes a referential bid, the whole auction will be

aborted but, if one makes and the other does not, the one who has failed to make will be cheated".

DISPLAY OF GOODS AND SERVICES

According to the words of CJ Parker in the case of (Fishers v Bell), "The display of an articulate shop with a price tag on it is only an invitation to treat and not an offer". The position of law is that the display of goods or services cannot constitute a valid form of offer. This principle was further reiterated in the case of (Pharmaticular Company of Great Britain v Boot cash chemist) and (Lasky v Economy Grocery stores).

ADVERTISEMENT

The general position of law is that, advertisements constitute an invitation to treat. However, it depends on the nature of such advertisements. To start with, advertisement is an act of creating awareness about a particular subject matter. Hence, advertisement can come in two forms which are (a) Unilateral advertisements and (b) Bilateral advertisements. Where advertisements are unilateral and such advertisements are plain, unambiguous, unequivocal and not subjected to further negotiations, such advertisement shall constitute an Offer. See (Carlill v Carbolic Smokeball Co.) But where such advertisement is subjected to further negotiations, such advertisement shall constitute an Invitation to treat.

On the other hand, for a Bilateral Advertisements, It is the law that such advertisement ab initio constitutes and invitation to treat. This position was blessed in the case of (Patridge v Crittenden). The rationale behind this is that they could lead to further bargaining. Hence, they cannot be termed an offer. This rule received further judicial pronouncement in the case of (Grainger & Sons v Grough).

INVITATION TO TENDER

The vacation to tender will be defined as add invitation to negotiate and not an offer. This position was held at common law in the case of (Spencer v Herding).An invitation should be presented in a clear and orderly manner and should be addressed to a small number of interested parties. An invitation to tender is otherwise known as CALL FOR BIDS

QUESTION 7

The defendant wrote to the plaintiff on 1st August 2004 offering to sell 900 tons of iron at 50,000 naira Par ton. On the same day the plaintiff wrote to the defendant offering to buy 900 tons of iron at 50,000 naira per ton. The letter crossed in the post. The plaintiffs argued that there was a contract between them. They court dismissed the plaintiff's case and the court held thus:

"When the contract is made between parties, there is a promise by one in consideration of the promise made by the other, there are two assenting minds, the parties agreeing in opinion and they wonder having promised in consideration of the promise made by the other, there is an exchange of promise but I do not think exchanging offers made on the other side in ignorance of the promise or offer made on the other side neither of them can be construed as an acceptance of the offer". justify this position in light of established principles of the law of contract. (Question 2, 2019).

ANSWER

The question above centers on cross offer. Cross offer is an invalid form of acceptance and this occurs whenan offer is made to another in ignorance that the offeree has made an initial offerof the same fact element or condition to the offeror. It occurs when two offers identical in terms are sent to each other by post or by any other means.

In (Tinns v Holfman&Co.)The defendant, Mr Hoffman wrote to the complainant, Mr Tinn with an offer to sell him 800 tons of iron for the price of 69s per ton. He requested a reply to this offer by post. On the same day, without knowing of this offer, Mr. Tin also wrote to Mr Hoffman. He offered to buy the iron on similar terms. This case concerned the validity of these two cross offers.

The issue in this case was whether there was a valid contract between Mr Tinn and Mr Hoffman for the sale of the iron. There was also the issue if acceptance had to be by post for it to be valid, as this was specified in the offer.

It was held in this case that there was no contract between Mr Tinn and Mr Hoffman for the iron. The cross offers were made simultaneously and without knowledge of one another; this was not a contract that would bind the parties for the iron. There is a difference between a cross offer and a counter offer. In order to form a valid contract, there must be communication that consists of an offer and acceptance. There was no acceptance by post, as had been stated in the offer. The court also said that while post had been indicated in the offer, another equally fast method would have been successful, such as a telegram or verbal message.

Similarly also, in the question given above, the actions of the 2 parties (the plaintiff and the defendant) constitutes a cross offer and such offer is deemed to be invalid within the purview of Law. Hence, there is no acceptance, and a valid Contract cannot be formed.

QUESTION 8

All contracts are agreement but not all agreements are contracts. Discuss (Question 3, 2019), (Question 3, 2016)

ANSWER

In legal terms, an agreement refers to a mutual understanding between two or more parties about their rights and obligations. On the other hand, a contract is a legally binding agreement that is enforceable by law. Similarly, Niki Tobi JCA (as he then was) in (Orient Bank v Bilante Intl.) Defined a contract as an agreement between two or more parties creating reciprocal legal obligations to do or not to do particular things. Thus, while all contracts are agreements, not all agreements are contracts due to the failure to meet the necessary requirements which constitutes a valid contract.

This Position follows the rule that not all agreements can be enforced in courts. This Can be as a result of absence of one of the a sensual element of a contract. There are two prominent factors which could make an agreement unenforceable in the courts. (1) Absence of one of the elements which constitutes A valid contract. (2) The absence of intention to create legal relations.

For a contract to be valid, they must be an expression of willingness to contract on specific terms (offer) and to such offer, there must be a reciprocal assent to such expression (acceptance).In line with this agreement, both parties must furnish consideration which must essentially move from the promisee and such promises must be bound by an intention to create legal relations by both parties. Finally both parties must have the capacity to enter into such contractual agreement within the purview of law.

However, not all contracts are enforceable, as some contracts lacks the intention to create legal relations. Such contracts include social and domestic contracts. This position has received judicial activism in a plethora of cases. In (Balfour v Balfour), A husband promised to pay his wife a £30 per month allowance. The wife sued her husband to enforce the promise. The court held that agreements between husband and wife to provide monies are generally not contracts because the "parties do not intend that they should be attended by legal consequences." Hence, there was no Contract.

This principle of law was further reiterated in(Spellman v Spellman)and pushed to an harsh extreme end in (Jones v Padavatton) where the court held that social and domestic engagements are based on good faith and there is no intention to create legal relations. However, this rule is

not without exception. The exception was visited in the case of (Mc Gregor v Mc Gregor) and reiterated in (Merritt v Merritt) Where the court expressed that where there's a strained relationship between the couples, any agreement reached between both couples shall be deemed to have intended legal consequences.

In conclusion, the statement that all contracts are agreements but not all agreements are contracts holds true. While all contracts are based on agreements, not all agreements meet the necessary requirements to be considered legally binding contracts. The presence of essential elements such as offer, acceptance, consideration, and intention to create legal relations determines whether an agreement can be classified as a contract.

QUESTION 9

Person who is not a party to a contract has no right or liability under it and therefore the contract cannot be enforced against him. Enumerate the principle of law in the statement and discussed fully the exceptions. (Question 1, 2018); (Question 4, 2019)

ANSWER

The doctrine of privity of contract was succinctly stated in the locals classical case of **(Dunlop Pneumatic tyres v Selfridge Co).**This doctrine states that only a person who is a party to a contract cancel upon it. Lord Eldon said in the above case that

My Lord, in the laws of England, certain principles are fundamental. One is that only a person who is a party to a contract can sue upon it.

This principle received further judicial blessings in the case of **(B.B Agupo & Sons v Orthopedic Hospital Board)** where **Kekere Ekun JSC** further expressed the rule of privity by stating that, only parties to a contract can maintain an action on it. Even if the contract benefits a

third party, the third party shall not be allowed to sue or be sued because he has furnished no consideration in support of the contract.

The above principle is however not without exceptions. Exceptions to the rule of privity of contract includes Agency, Contract of insurance, Contracts running with land, Charter Parties, Special application of Trust and the concept of Equity.

The general principle of privity was applied in the case of (**Price v Easton**) Where is Easton promised to set off X debt to Price if and only if Easton works for him. The court held that Price cannot sue for the failure of Easton on the basis that Price was not a party to the contract as the contract was only between X and Easton. This rule was further reiterated in the case **of (Tweddle v Atkinson)**. The Court expressed in the case of **(Tweddle v Atkinson)** that "Generally, a contract cannot be enforced by a person who is not a party, even if the contract is made for his benefit and purports to give him right to sue upon it" and in support of this, the court as well noted in (**Negbenebor v Negbenebor)** that where the doctrine of privity fails, the parties is seen as a party to the contract.

The rationale behind the Doctrine of privacy was given in the case of **(Ladimeji v Federal Min. of Works & Housing)** where the principle was once more reiterated that "The law is sacrosanct that a contract binds only the party to it and cannot be enforced by or against a Person who is not a party even if the contract was made for his benefit". the exceptions to the doctrine of privity of contract will be briefly expressed below.

EXCEPTIONS TO THE DOCTRINE OF PRIVITY OF CONTRACT.

1. **COVENANT RUNNING WITH THE LAND**

   It is now a settled law that in special cases, the doctrine of privity shall serve as exception to contracts affecting lands when there is a restrictive measure. This rule was consolidated in the case of **(Tulk v Moxhay)**. In the aforementioned case, the court held that "a restrictive covenant voluntarily accepted by a purchaser of a land as part of the contract of sale within certain circumstances bind persons who subsequently acquired the land". This standing rule has been the order of the day since antiquity. Notwithstanding, there have been further development on this rule, where it was held that the mere notice of a restrictive covenant will not be sufficient to activate this rule but instead the original

seller of the land must have retained some other parts of the land in the neighborhood for the benefit or protection of which the restrictive covenant was taken. This rule is said to have evolved from the doctrine of equity and was examined in the case of **(Fromby v Barker).** In the aforementioned case, it failed the test of the rule outlined in **(Tulk v Moxhay)** on the grounds that there was no retention of a part of the land sold out. Thus, it was seen as a personal covenant and not a covenant running with land. The characteristics of a covenant running with land were well illustrated in the case of **(Smith v River Douglas Catchment Board)** where Somervell J. adopted the judgment of Farewell J. in **(Rogers v Hosegood)** in outlining the features of a covenant running with land as follows:

(a) It must be made with a covenanted who has an interest in the land to which they refer and

(b) They must concern and touch the land. In the Learned lord Justices view, the conditions were satisfied in this case

2. FAMILY LAND

The sale of family land under customary law is another exception to the doctrine of privity of Contract. Various courts decisions have shown that, members of a family are entitled to being an action to set aside conveyance which has been made without their consent. See **(Lewis v Bankole). Karibi Whyte JSC** also further expressed in the case of **(Adejumo v Ayantegbe)** that at customary law, **"the ownership of family land is vested in the past, present and future member of the family".** Thus, a family land belongs to all members of the family and it does not matter, if he is a party to the contract or not. The doctrine of privity will not prevail.

3. CONTRACTS FOR THR HIRE OF CHATTEL

The question under this exception of law is that, can a third party who has once furnished consideration to an agreement under a charter enforce such Contract if the chattel is mortgaged or sold to another person and such person plans to act inconsistency with the agreement reached between the charterer and the third party?

This question of law has been succinctly addressed by **Knight Bruce LJ in the case of (De Mattos v Gibson)** where he noted that **"when a man purchases or acquires properties from another with knowledge of a previous contract lawfully and for valuable consideration made by him, with a third party to use and enjoy the property for a particular purpose in a specified manner, the acquirer shall not to the material damage of the third person, in opposition to the contract act inconsistency with it, use the property in a manner which is not allowable to the giver or seller".** This rule was further powerfully boosted in the Privy Council decision of **(Lord Strathcona Steamship Co v Dominion Coal co)**

4. INTERFERENCE WITH CONTRACTUAL RIGHTS

As held In the case of **(Lumley v Wenger).** It shall amount to a legal wrong at common law, torts for a person knowingly to interfere with the contractual rights of others. The rule of wrongful interfere is equally applicable to chattel and services. This rule was also applied in **(British Motor Trade Association v Salvador).** Thus, a person shall not be allowed to interfere in other people's contractual obligations.

5. RESTRICTION UPON PRICE

The case of **(Dunlop Pneumatic Tyres v Selfridge Co**) has not but furnished some elements in relations to the restriction upon price. The principle of law on this subject matter is that, if A (a manufacturer) sells to B (a dealer) on a condition that all the retailer buying from B must undertake not to sell below a particular price. I'd such retailer violates this undertaking, A cannot sue the retailer because there is no privity of Contract between them. Conditions do not run with goods as they run with land. Thus, to cases related to the restrictions upon price to goods, the rule of privity shall be exempted. See (Tardy & Co v Serious & Co).

6. INSURANCE

Insurance Contracts have evolved to serve as an exception to the doctrine of privity and an example of this have been well provided in Section 11, Married Women Act provides that:

Where a man insures his life for the benefit of his wife and children and vice versa (Woman); the woman shall be allowed to due despite not being a party to the contract and the principles of privity will not avail.

QUESTION 10

Write short notes on the following

a. Invitation to Treat. (Question 3, 2018)
b. Offer. (Question 3, 2018)
c. Acceptance. (Question 3, 2018)
d. Consideration. (Question 3, 2018)
e. Intention to create legal relations. (Question 3, 2018)

Invitation to Treat:

An invitation to treat is an invitation for negotiations or expressions of interest in entering into a contract. It is not a legally binding offer, but rather a preliminary step towards potentially forming a contract. Invitation to Treat can otherwise be described as offer to receive other offers or offer to chaffer. The rule of invitation to Treat was expressed in the case of **(Gibson v Man City Council)**. Examples include advertisements (**Patridge v Crittenden),** Auction (Payne v Cave), and displays of goods for sale **(Pharmaticular company of Great Britain v Boot Cash Chemist) ,** Tender **(Spencer v Herding).**

Offer:

An offer is a definite proposal made by one party to another, indicating a willingness to enter into a contract. The Supreme Court defined an offer in the case **of (Storer v Manchester City)** as **(a) an expression of willingness to contract on specific terms (b) with an intention that it is to be binding upon the party to whom it is addressed.** An offer must contain specific terms and conditions that, if accepted, would result in a binding agreement. An offer can be made orally, in writing, or even through conduct. However, an offer must be plain, unequivocal and unambiguous. The general rule of offer is that, an offer must be communicated. This rule was expressed in the case of **(Felthouse v Bindley)**.

Acceptance:

Acceptance is the unconditional agreement to the terms of an offer made by the other party. In **(Orient Bank v Bilante Intl) Nikki Tobi** defined Acceptance in the following words. **"An acceptance to an offer is a reciprocal act or action from the offered to the offeror in which he indicates his agreement To the terms the offer as conveyed to him by the offeror. Putting it in another language, An acceptance is a compliance In the part of the offeree to the terms of the offer. It is the element of acceptance down that scores the bilateral nature of a contract".** However, one of the guiding principles of Acceptance is that, It must be communicated to the offeror. See **(Liard v Taylor).** Acceptance creates a binding contractual agreement between the parties involved.

Consideration:

Consideration is a very vital element of every contractual agreements and without consideration, there cannot be a valid contract except such contracts is under seal. In lieu of this, The court held in the case of (**Gray Shot v Minister of Agriculture**) that **"except an agreement is under seal, it cannot be enforced by a party who has not furnished some consideration in support of it"**. The term consideration have been most comprehensively defined by the court in the words of **LUSH J**. in **(Curie v Misa)** thus: **A valuable consideration in the eyes of law must consist, either in some right, interest, profit or benefit according to one party or some forbearance, detriment, loss of responsibility, given suffered or undertaken by the other…**… In the

simplest sense consideration can be defined as some sort of inducement given to enter into a contract of which makes such contractual agreement enforceable by the courts. There was an attempt by Lord Mansfield to equate moral obligations to consideration when he became the CJ in 1756. However, this rule was demolished in 1840 in the classical case of **(Eastwood v Kenyon)**. This dead doctrine propounded by Lord Mansfield was later reawakened by Aguda J. in the case **of (Barclays Bank Co v Sulaiman)** where the test of moral obligation was again questioned. This question of law became finally settled by the court in the Nigerian case of **(Faloughi v Faloughi)** where the court held that natural love or affection was not a true or real consideration before it was not capable of estimation in terms of value. Furthermore, it is a general rule of contracts that consideration must move from the promisee. This follows the doctrine of QUID PRO QUO. However for a consideration to be deemed valuable in the eyes of law, such consideration needs not to be adequate but sufficient. I.e It must confess some sort of benefit to the promisor Or some sort of detriment to the promisee. What is meant by the above statement is that, in the absence of fraud, duress or misrepresentation, The court is only concerned with the concept of consideration and not its value or worth.

Intention to Create Legal Relations:

This refers to the understanding that both parties intend to be legally bound by their agreement. This is the major element which differentiates Contracts from other form of agreement. In order for a contract to be enforceable, there must be an intention to create legal relations. Unlike other forms of contract, not all contracts are enforceable in court due to the absence of Intention. Social agreements, such as casual conversations between friends, may not have the intention to create legal relations unlike business and commercial agreements. The concept of Intention has received a plethora judicial activism. In **(Balfour v Balfour),** A husband promised to pay his wife a £30 per month allowance. The wife sued her husband to enforce the promise. The court held that agreements between husband and wife to provide monies are generally not contracts because the **"parties do not intend that they should be attended by legal consequences."** Hence, there was no Contract. This principle of law was further reiterated in **(Spellman v Spellman)** and pushed to an harsh extreme end in **(Jones v Padavatton)** where the court held that social and domestic engagements are based on good faith and there is no intention to create

legal relations. However, this rule is not without exception. The exception was visited in the case of **(Mc Gregor v Mc Gregor)** and reiterated in (Merritt v Merritt) Where the court expressed that where there's a strained relationship between the couples, any agreement reached between both couples shall be deemed to have intended legal consequences.

QUESTION 12

Once consideration is some sort of value in the eyes of the law the court has no jurisdiction to determine whether it is adequate or inadequate. (Gaji v Faye). Examine the above statement in view of consideration as an element of a valid contract. (Question 3, 2014)

ANSWER

Overtime, consideration has formed the hallmark of all contractual agreements and as a general rule; a party who has furnished no consideration cannot bring an action upon it. Consideration is a very vital element of every contractual agreement and without consideration, there cannot be a valid contract except such contracts is under seal. In lieu of this, the court held in the case of (Gray Shot v Minister of Agriculture) that "except an agreement is under seal, it cannot be enforced by a party who has not furnished some consideration in support of it".

The term consideration have been most comprehensively defined by the court in the words of LUSH J. in(Curie v Misa) thus:A valuable consideration in the eyes of law must consist, either in some right, interest, profit or benefit according to one party or some forebearance, detriment, loss of responsibility, given suffered or undertaken by the other……In the simplest sense consideration can be defined as some sort of inducement given to enter into a contract of which makes such contractual agreement enforceable by the courts.

There was an attempt by Lord Mansfieldto equate moral obligations to consideration when he became the CJ in 1756. However, this rule was demolished in 1840 in the classical case of (Eastwood v Kenyon). This dead doctrine propounded by Lord Mansfield was later reawakened by Aguda J. in the case of (Barclays Bank Co v Sulaiman) where the test of moral obligation was

again questioned. This question of law became finally settled by the court in the Nigerian case of (Faloughi v Faloughi) where the court held that natural love or affection was not a true or real consideration before it was not capable of estimation in terms of value.

Furthermore, it is a general rule of contracts that consideration must move from the promisee. This follows the doctrine of QUID PRO QUO. However for a consideration to be deemed valuable in the eyes of law, such consideration needs not to be adequate but sufficient. I.e It must confess some sort of benefit to the promisor some sort of detriment to the promisee. What is meant by the above statement is that, in the absence of fraud, duress or misrepresentation, The court is only concerned with the concept of consideration and not its value or worth.

In view of the above, Lord Somervell expressed in the case of (Chappel v Nestle) thus: "A contracting party can stipulate for what consideration he chooses, A peppercorn does not cease to be a good consideration if it is established that The promise does not like the pepper and throws away the corn". Also, the court emphasized in (Thomas v Thomas) that "The court does not declare a contract invalid simply because One party got a better bargain than the other". Finally, the principle of Adequacy of consideration was finally laid to rest by KAGLO JCA in (Faloughi v Faloughi) where he clearly opined that, " and once the consideration is some sort of value in the eyes of law, the court has no jurisdiction to determine whether it is adequate or inadequate". Summarily, the court is not concerned with the value of Consideration, provide that such consideration is reached in the process of bargain between both parties in the absence of fraud, duress or misrepresentation.

Furthermore, for consideration to be valid, it must be of economic value in the eyes of law, and must be free from vagueness, ambiguity and unascertainability. In (White v Bluett), the court rejected the consideration of the late husband on the basis that it was just mere wishes and had no physical or economical value. Also, consideration could be either Executed or Executory. An Executed Consideration is a consideration which has been performed in support of a promise while an Executory consideration is one where the promise for value is not immediate but based on a future or later date.

However, it is noteworthy to state, that not all forms of consideration are valid. Invalid forms of consideration could include (a) Total failure of consideration by means of gratuitous Promise (b) Total failure of consideration in situations where the plaintiff totally fails to furnish consideration

(c) where consideration is furnished by the 3rd party and (d) where there is a claim of an excess of benefit provided in an agreement.

It is a general rule of contract that consideration must move from both parties in the contract. Notwithstanding, in situations where consideration is furnished by a party to another, who fails to furnish consideration in return, in support of a promise, such promise shall be regarded as a non legally binding promise otherwise known as a Gratuitous promise. This rule received judicial pronouncement in the case of (L.A Cardozo v Executors of the Estate of Late J.A Doherty).

Secondly, where there is a Total failure of consideration by the plaintiff, or where either party has taken no obligation on the side of the contract, such Contract will be deemed to be devoid of consideration following the words of Cotton LJ in (Miles v New Zealand Alford Estate Co.) where it was held that "there must be something moving from the other party towards the person giving the promise". Thus, every promise has to be backed up by consideration, otherwise, there can be no liability arising from it in situation of breach.

Thirdly, where consideration is furnished by the third party and not the plaintiff. The plaintiff cannot bring an action upon such promise. This follows after the doctrine of privity of contract which states that the person was furnished no consideration cannot bring an action upon it. (Gbadamosi v Mbadiwe).

Lastly, where there is a claim of an excess of benefit provided in an agreement, a promise for such excess shall not be enforceable in the court for there is no consideration in support of it. This rule was exemplified in the case of (Eguare v Shell BPD of Nig.).

In conclusion, for a contract to be valid and enforceable in the court of law, one of the most important element which has to be present is Consideration and failure to furnish such consideration will often lead to the unenforceability of such contract except such contract is under seal.

QUESTION 13

In the case (BFIG v BPE), it was carefully stated that, the element of acceptance is crucial in determining the bilateral nature of a contract. The term acceptance was defined In (Orient Bank v Bilante Intl) by Nikki Tobi in the following words. " An acceptance to an offer is a reciprocal act or action from the offeree to the offeror in which he indicates his agreement To the terms the offer as conveyed to him by the offeror. Putting it in another language, An acceptance is a compliance In the part of the offeree to the terms of the offer. It is the element of acceptance down that scores the bilateral nature of a contract". However, there are various forms in which Acceptance could follow and a few of these forms are discussed below.

ANSWER

1. Conduct of the Parties: Acceptance can be inferred from the actions or conduct of the parties involved. This means that if both parties act in a way that suggests an agreement has been reached, then acceptance can be deemed to have occurred. In **(Carlill v Carbolic Smoke Ball Co**), the Court of Appeal held that acceptance by conduct can also apply to unilateral contracts. In this case, the defendant company advertised a reward for anyone who contracted influenza after using their product. The plaintiff purchased and used the smoke ball as advertised, and when she contracted the flu, she tried to claim the reward. The court held that the advertisement was an offer, and the plaintiff's conduct of purchasing and using the product constituted acceptance of that offer.

2. Words: Acceptance can also be expressed through verbal communication. This can be in the form of spoken words during a conversation or through a telephone call where both parties explicitly agree to the terms of the contract.Regarding acceptance by words, the case of **(Entores Ltd v Miles Far East Corporation)** provides guidance. In this case, the court held that where parties communicate orally rather than in writing, acceptance is generally effective when it is received by the offeror. The court emphasized that acceptance by words must be communicated directly to the offeror and must be clearly expressed.

3. Documents: Acceptance can be evidenced by the exchange of documents between the parties. This could include signed contracts, proposals, or other written agreements that demonstrate the intention to be bound by the terms outlined.Acceptance by document that has passed between the parties can be demonstrated by the case of **(Household Fire Insurance v Grant).** In this case, the defendant was offered a fire insurance policy, and he sent a letter back accepting the offer. However, before the letter of acceptance arrived, the offeror had withdrawn the offer. The court held that acceptance takes place when the letter of acceptance is posted, as it becomes binding on the parties upon posting. This is known as the postal rule of acceptance.

4. Post: Acceptance by post, also known as the **"postal rule,"** is a traditional legal principle that states that acceptance occurs when a properly addressed and stamped acceptance letter is posted. This mode of acceptance is effective once the letter is posted, even if it hasn't been received by the other party yet. Acceptance by post is further clarified in the case of **(Adams v Lindsell)** In this case, the defendants wrote to the claimant offering to sell them some wool and requested a response by post. However, due to a postal error, the claimant's acceptance was delayed and the defendants sold the wool to someone else. The court held that acceptance is effective upon posting, regardless of when it will be received by the offeror.

Overall, the above details illustrate the various modes of acceptance in contract law, including acceptance by conduct, words, documents, and post. It is essential to carefully consider the circumstances and specific facts of each case to determine the validity and timing of acceptance in bilateral contracts.

QUESTION 14

The operation of the ruling Pinnel's case worked hardship and injustice to the defendant who would have believed and relies on the plaintiffs promised to forgo the balance of the debt owed. In view of the aforesaid, discuss the rule in High Tree's case. (Question 6, 2016).

ANSWER

The rule in Pinnel's case is majorly applicable under the contractual duty to pay debts. This rule was first developed in 1602 where it was held that the part payment of a debt owed will not amount to sufficient consideration before the court. However, the court in this case further held that the payment of a fractional part of debt as agreed by the promisee to write off the totality of the debt in addition to a new element will amount to sufficient consideration. The rule outlined in Pinnel stood as an exception to the Principle guiding the contractual duty to pay debt.

Litigants have often attempted to use the rule in Pinnel's case to escape the full rigor of law. This attempt was made in the case of **(D&C Builders v Rees)** where the introduction of a new element was proposed to be used as an escape route. However, this form of reasoning was demolished by Lord Denning in the aforementioned case.

Due to the hardship experienced in the Pinnel's Rule, Equity emerged with a doctrine to mitigate its harshness. The classical doctrine which evolved from Equity under consideration to mitigate the Common Law Pinnel's rule was the rule outlined the case of **(High Trees v. Central London Property Trust)**. Prior to this time, it was first unsuccessfully attempted in the case of **(Jordan v Money)** where it explained it to be only applicable to statement of Intention and not statement of existing fact. However, this rule received a new position in the 1877 case of **(Hughes v Metropolitan Ry Co).** This emerging rule is commonly known as the doctrine of promissory or equitable estoppel. This doctrine serves an exception to the general rule of consideration in contract law. This rule was finally officially blessed in the case of **(Central London Property Trust v High Trees House).**

In the case of (Central London Property Trust v High Tree's House), an action instituted immediately after the World War II. The facts of this case was that, during World War II, the defendant, Central London Property Trust, leased a property from the plaintiffs, High Trees. Due to the war, the property suffered from a lack of occupancy, which affected its value and rental potential. To address this issue, the plaintiffs agreed to accept a reduced rent amount from the defendant for the duration of the war.

After the war, the property's value and rental potential increased significantly. At that point, the plaintiffs sought to claim the full rental amount from the defendant. In response, the defendant asserted that the plaintiffs were estopped from claiming the full rent due to their previous agreement for reduced rent.

The court, in its decision, established the doctrine of promissory estoppel. It held that when a party makes a clear and unequivocal promise to another party, intending for the other party to rely on that promise, and the other party does rely on it to their detriment, the party making the promise is estopped from going back on their promise.

In simpler terms, if one party makes a promise and the other party relies on that promise, the first party cannot later renege on the promise if it causes harm or injustice to the other party. In the context of High Trees' case, the plaintiffs were estopped from claiming the full rent owed to them because they had made a promise to accept a reduced rent, and the defendant had relied on that promise to their detriment.

It is important to note that promissory estoppel does not create a binding contract, but it prevents the party who made the promise from asserting their strict legal rights to the detriment of the other party. The doctrine of promissory estoppel is meant to prevent injustice and unfairness when parties rely on promises made in good faith.

In conclusion, the rule in High Trees' case established the doctrine of promissory estoppel, which prevents a party who made a clear and unequivocal promise from going back on that promise if the other party relied on it to their detriment. This rule was established to address and avoid hardship and injustice resulting from the operation of the strict rules of consideration in contract law.